

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

EX-107, CONTROL

AT RICHMOND, APRIL 6, 2007

COMMONWEALTH OF VIRGINIA, ex rel.

EX-107 - 4 APR 11:43

STATE CORPORATION COMMISSION

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Securities Act

CASE NO. SEC-2007-00017

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission (“Commission”) shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-523 of the Virginia Securities Act (“Act”), § 13.1-501 *et seq.* of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

The rules and regulations issued by the Commission pursuant to the Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission’s website: <http://www.scc.virginia.gov/division/srf>.

The Division of Securities and Retail Franchising (“Division”) has submitted to the Commission proposed revisions to Chapter 10, Chapter 20, and Chapter 80 of Title 21 of the Virginia Administrative Code entitled “Rules and Forms Governing Virginia Securities Act,” which add new rules 21 VAC 5-20-65, 21 VAC 5-20-95, and 21 VAC 5-80-65, and revise rules 21 VAC 5-10-40, 21 VAC 5-20-280, 21 VAC 5-20-330, 21 VAC 5-80-160, and 21 VAC 5-80-200.

Proposed new rule 21 VAC 5-20-65 adds a definition for the term “records” and requires that certain records be maintained in a certain manner and produced for inspection of broker-

dealers, agents and agents of the issuer. Proposed new rule 21 VAC 5-80-65 again adds a definition for the term “records” and requires that certain records be maintained in a certain manner and produced for inspection for investment advisors and investment advisor representatives. As a result of the statutory changes made during the legislative session, proposed new rule 21 VAC 5-20-95 allows a registered agent to be employed by more than one broker-dealer under prescribed conditions.

Revised rule 21 VAC 5-10-40 adds a definition for the term “breakpoint.” Revised rule 21 VAC 5-20-280 adds new prohibited business conduct for broker-dealers including networking arrangements, breakpoints, conflicts of interest disclosure, and other broker-dealer disclosures. Revised rule 21 VAC 5-20-330 clarifies the current rule and brings the requirements into line with related NASD regulations. Revised rule 21 VAC 5-80-160 adds a new provision that requires the investment advisor to keep any records documenting dates, locations, and findings of the investment advisor’s annual review of its policies and procedures. Revised rule 21 VAC 5-80-200 adds new provisions dealing with advertisements and testimonials used by investment advisors.

The Division has recommended to the Commission that the proposed revisions should be considered for adoption with an effective date of July 1, 2007. The Division also has recommended to the Commission that a hearing should be held, if requested by those interested parties who wish to comment with regard to the proposed rules, to consider the proposed revisions on May 30, 2007.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, by mail or e-mail request and also can be found at the Division’s website:

<http://www.scc.virginia.gov/division/srf>. Any comments to the proposed rules must be received by May 16, 2007.

IT IS THEREFORE ORDERED that all interested persons TAKE NOTICE that:

(1) The Commission shall conduct a hearing, if necessary, in the Commission's Courtroom, 2nd Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia 23219 at 10 a.m. on May 30, 2007, to consider the adoption of the revisions proposed by the Division with an effective date of July 1, 2007.

(2) On or before May 16, 2007, any interested person desiring to comment in support of or in opposition to the proposed revisions shall file comments in writing with the Clerk of the Commission, Document Control Center, P. O. Box 2118, Richmond, Virginia 23218.

(3) On or before May 16, 2007, any interested person intending to appear and be heard at the hearing on the proposed revisions shall file written notice of his intention to do so, which notice shall include his comments in support of or in opposition to the proposed revisions, with the Clerk of the Commission at the address set forth in the preceding paragraph. If no person files a timely written notice of intention to appear at the hearing on May 29, 2007, the hearing may not be held.

(4) All filings made under paragraph (2) or (3) shall contain a reference to Case No. SEC-2007-00017.

(5) The Commission's Division of Information Resources shall cause a copy of this Order, together with proposed revisions, to be forwarded to the Virginia Registrar of Regulations for the appropriate publication in the Virginia Register of Regulations.

(6) On or before April 30, 2007, the Commission's Division of Information Resources shall make available this Order and the proposed revisions on the Commission's website: <http://www.scc.virginia.gov/caseinfo/orders.htm>.

CHAPTER 10

GENERAL ADMINISTRATION--SECURITIES ACT

21 VAC 5-10-40. Definitions.

As used in ~~the Securities Act~~ this chapter, the following regulations and forms pertaining to securities, instructions and orders of the commission, the following meanings shall apply:

"Act" means the Securities Act contained in Chapter 5 (§13.1-501 et seq.) of Title 13.1 of the Code of Virginia.

"Applicant" means a person on whose behalf an application for registration or a registration statement is filed.

"Application" means all information required by the forms prescribed by the commission as well as any additional information required by the commission and any required fees.

"Bank Holding Company Act of 1956" (12 USC §1841 et seq.) means the federal statute of that name as now or hereafter amended.

"Boiler room tactics" mean operations or high pressure tactics utilized in connection with the promotion of speculative offerings by means of an intensive telephone campaign or unsolicited calls to persons not known by or having an account with the salesman or broker-dealer represented by him, whereby the prospective purchaser is encouraged to make a hasty decision to invest, irrespective of his investment needs and objectives.

"Breakpoint" means the dollar level of investment necessary to qualify a purchaser for a discounted sales charge on a quantity purchase of open-end management company shares.

"Commission" means State Corporation Commission.

"Federal covered advisor" means any person who is registered or required to be registered under §203 of the Investment Advisers Act of 1940 as an "investment adviser."

"Investment Advisers Act of 1940" (15 USC §80b-1 et seq.) means the federal statute of that name as now or hereafter amended.

Notwithstanding the definition in §13.1-501 of the Act, "investment advisor representative" as applied to a federal covered advisor only includes an individual who has a "place of business" (as that term is defined in rules or regulations promulgated by the SEC) in this Commonwealth and who either:

1. Is an "investment advisor representative" as that term is defined in rules or regulations promulgated by the SEC; or
2. a. Is not a "supervised person" as that term is defined in the Investment Advisers Act of 1940; and
b. Solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered advisor.

"Investment Company Act of 1940" (15 USC §80a-1 et seq.) means the federal statute of that name as now or hereafter amended.

"NASAA" means the North American Securities Administrators Association, Inc.

"NASD" means the National Association of Securities Dealers, Inc.

"Notice" or "notice filing" means, with respect to a federal covered advisor or federal covered security, all information required by the regulations and forms prescribed by the commission and any required fee.

"Registrant" means an applicant for whom a registration or registration statement has been granted or declared effective by the commission.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act of 1933" (15 USC §77a et seq.) means the federal statute of that name as now or hereafter amended.

"Securities Exchange Act of 1934" (15 USC §78a et seq.) means the federal statute of that name as now or hereafter amended.

CHAPTER 20

BROKER-DEALERS, BROKER-DEALER AGENTS AND AGENTS OF THE ISSUER:
REGISTRATION, EXPIRATION, RENEWAL, UPDATES AND AMENDMENTS,
TERMINATION, CHANGING CONNECTION, MERGER OR CONSOLIDATION,
EXAMINATIONS/QUALIFICATION, FINANCIAL STATEMENTS AND EXPORTS.

21 VAC 5-20-65. Broker-dealer records retention requirements.

The following requirements apply to every registered broker-dealer as a condition of registration as a broker-dealer under the Act:

1. All of the broker-dealer's records, immediately upon the request of the commission, will be made available for inspection by the commission and reproduction for the commission in an office where the records are maintained;
2. All of the broker-dealer's records or legible copies of the same, or print outs of the same, if automated, pertaining to a securities transaction any part of which occurred or is to occur within the Commonwealth of Virginia will be made available for inspection by the commission in the office of the commission's Division of Securities and Retail Franchising within 48 hours after request of the commission for same;
3. The term "records" as used in this section means and includes all books, papers, documents, tapes, films, photographs, electronic readable format or other materials, regardless of physical form or characteristics that (i) are maintained for recordation or storage of information prepared, used or to be used in connection with a securities transaction or (ii) were used or are to be used in connection with securities transactions;

4. Failure to comply with this section may be considered grounds for the institution of a proceeding to revoke a broker-dealer's registration or for such other penalty prescribed by the Act; and

5. Any broker-dealer subject to a commission investigation may be required to pay the actual cost of the investigation.

21 VAC 5-20-95. Employment of an agent by more than one broker-dealer.

A. In accordance with §13.1-504 B of the Act, an agent may be employed by more than one broker-dealer if all of the following conditions are satisfied:

1. Each employing broker-dealer is under common ownership and control as defined in subsection B of this section.

2. Each employing broker-dealer is registered in accordance with 21 VAC 5-20-10.

3. Each employing broker-dealer consents in writing to the employment of the agent by each of the other employing broker-dealers.

4. Each employing broker-dealer agrees to be responsible for the employment activity of the agent.

5. The agent is registered in accordance with 21 VAC 5-20-90 by and on behalf of each employing broker-dealer.

6. Each employing broker-dealer executes an Agent Multiple Employment Agreement (Form S.A.16), and the executed agreement is filed with the commission at its Division of Securities and Retail Franchising prior to the agent transacting business in Virginia on behalf of such broker-dealer.

7. A new Agent Multiple Employment Agreement is executed and filed with the commission at its Division of Securities and Retail Franchising within 15 days after any information in a current agreement on file with the Commission becomes materially deficient, incomplete or inaccurate.

B. The term "common ownership and control" as used in this section means possession of at least a 50% ownership interest in each employing broker-dealer by the same individual or individuals.

21 VAC 5-20-280. Prohibited business conduct.

A. No broker-dealer shall:

1. Engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers ~~and/or~~ or in the payment upon request of free credit balances reflecting completed transactions of any of its customers, or take any action that directly or indirectly interferes with a customer's ability to transfer his account; provided that the account is not subject to any lien for ~~moneys~~ monies owed by the customer or other bona fide claim, including, but not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his account;
2. Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
3. Recommend to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation, risk tolerance and needs, and any other relevant information known by the broker-dealer;

4. Execute a transaction on behalf of a customer without authority to do so or, when securities are held in a customer's account, fail to execute a sell transaction involving those securities as instructed by a customer, without reasonable cause;
5. Exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time ~~and/or~~ or price for the execution of orders;
6. Execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account, or fail, prior to or at the opening of a margin account, to disclose to a noninstitutional customer the operation of a margin account and the risks associated with trading on margin at least as comprehensively as required by NASD Rule 2341;
7. Fail to segregate customers' free securities or securities held in safekeeping;
8. Hypothecate a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the SEC;
9. Enter into a transaction with or for a customer at a price not reasonably related to the current market price of a security or receiving an unreasonable commission or profit;
10. Fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;
11. Introduce customer transactions on a "fully disclosed" basis to another broker-dealer that is not exempt under §13.1-514 B 6 of the Act;

12. a. Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of ~~moneys~~ monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

b. Charge a fee based on the activity, value or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or nonpayment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least 60 days prior to the effective date of the fee;

13. Offer to buy from or sell to any person any security at a stated price unless ~~such~~ the broker-dealer is prepared to purchase or sell, ~~as the case may be,~~ at ~~such~~ the price and under such conditions as are stated at the time of ~~such~~ the offer to buy or sell;

14. Represent that a security is being offered to a customer "at a market" or a price relevant to the market price unless ~~such~~ the broker-dealer knows or has reasonable grounds to believe that a market for ~~such~~ the security exists other than that made, created or controlled by ~~such~~ the broker-dealer, or by any person for whom he is acting or with whom he is associated in ~~such~~ the distribution, or any person controlled by, controlling or under common control with ~~such~~ the broker-dealer;

15. Effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

- a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;
 - b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; ~~provided,~~ however, nothing in this ~~subsection~~ subdivision shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;
 - c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in ~~such~~ the security or raising or depressing the price of ~~such~~ the security, for the purpose of inducing the purchase or sale of ~~such~~ the security by others;
16. Guarantee a customer against loss in any securities account of ~~such~~ the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for ~~such~~ the customer;
17. Publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security unless ~~such~~ the broker-dealer believes that ~~such~~ the transaction was a bona fide purchase or sale of ~~such~~ the security; or which purports to quote the bid price or asked price for any security, unless ~~such~~ the broker-dealer believes that ~~such~~ the quotation represents a bona fide bid for, or offer of, ~~such~~ the security;

18. Use any advertising or sales presentation in such a fashion as to be deceptive or misleading.

An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

19. Fail to make reasonably available upon request to any person expressing an interest in a solicited transaction in a security, not listed on a registered securities exchange or quoted on an automated quotation system operated by a national securities association approved by regulation of the commission, a balance sheet of the issuer as of a date within 18 months of the offer ~~and/or~~ or sale of the issuer's securities and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, the names of the issuer's proprietor, partners or officers, the nature of the enterprises of the issuer and any available information reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer. All transactions in securities described in this ~~subsection~~ subdivision shall comply with the provisions of §13.1-507 of the Act;

20. Fail to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of ~~such~~ the security, the existence of ~~such~~ control to ~~such~~ the customer, and if ~~such~~ disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

21. Fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

22. Fail or refuse to furnish a customer, upon reasonable request, information to which ~~such~~ the customer is entitled, or to respond to a formal written request or complaint; ~~or~~

23. Fail to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian, in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets; ;

24. Market broker-dealer services that are associated with financial institutions in a manner that is misleading or confusing to customers as to the nature of securities products or risks; or

25. In transactions subject to breakpoints, fail to:

a. Utilize advantageous breakpoints without reasonable basis for their exclusion;

b. Determine information that should be recorded on the books and records of a member or its clearing firm, which is necessary to determine the availability and appropriateness of breakpoint opportunities; or

c. Inquire whether the customer has positions or transactions away from the member that should be considered in connection with the pending transaction, and apprise the customer of the breakpoint opportunities.

B. No agent shall:

1. Engage in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;
2. Effect any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction;
3. Establish or maintain an account containing fictitious information in order to execute a transaction which would otherwise be unlawful or prohibited;
4. Share directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;
5. Divide or otherwise split the agent's commissions, profits or other compensation from the purchase or sale of securities in this state with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control; or
6. Engage in conduct specified in subdivisions A 2, 3, 4, 5, 6, 10, 15, 16, 17, 18, ~~or 23, 24 or 25~~ of this section.

~~C. Failure to comply with any of the applicable continuing education requirements set forth in any of the following, if such failure has resulted in an agent's denial, suspension or revocation of a license, registration or membership with a self regulatory organization, It shall be deemed a demonstration of a lack of business knowledge by an agent insofar as such business knowledge is required for registration by §13.1-505 A 3 of the Act, if an agent fails to comply with any of the applicable continuing education requirements set forth in any of the following and such failure has resulted in an agent's denial, suspension, or revocation of a license, registration, or membership with a self regulatory organization.~~

1. Schedule C to the National Association of Securities Dealers By-Laws, Part XII of the National Association of Securities Dealers, as such provisions existed on July 1, 1995;
2. Rule 345 A of the New York Stock Exchange, as such provisions existed on July 1, 1995;
3. Rule G-3(h) of the Municipal Securities Rulemaking Board, as such provisions existed on July 1, 1995;
4. Rule 341 A of the American Stock Exchange, as such provisions existed on July 1, 1995;
5. Rule 9.3A of the Chicago Board of Options Exchange, as such provisions existed on July 1, 1995;
6. Article VI, Rule 9 of the Chicago Stock Exchange, as such provisions existed on July 1, 1995;
7. Rule 9.27(C) of the Pacific Stock Exchange, as such provisions existed on July 1, 1995; or
8. Rule 640 of the Philadelphia Stock Exchange, as such provisions existed on July 1, 1995.

Each or all of the education requirements standards listed above may be changed by each respective entity and if so changed will become a requirement if ~~such~~ the change does not materially reduce the educational requirements expressed above or reduce the investor protection provided by ~~such~~ the requirements.

D. No person shall publish, give publicity to, or circulate any notice, circular, advertisement, newspaper article, letter, investment service or communication which, though not purporting to offer a security for sale, describes ~~such~~ the security, for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

E. The purpose of this subsection is to identify practices in the securities business which are generally associated with schemes to manipulate and to identify prohibited business conduct of broker-dealers ~~and/or~~ or sales agents.

1. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

2. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

3. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, ~~non-public~~ nonpublic information which would affect the value of the security.

4. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.

5. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (ii) parking or withholding securities.

6. Although nothing in this subsection precludes application of the general ~~anti-fraud~~ antifraud provisions against anyone for practices similar in nature to the practices discussed below, the

following subdivisions a through f specifically apply only in connection with the solicitation of a purchase or sale of OTC (over the counter) unlisted non-NASDAQ equity securities:

- a. Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions.
 - b. In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer; however, subdivision 6 of this subsection shall apply only if the firm is a market maker at the time of the solicitation.
 - c. Conducting sales contests in a particular security.
 - d. After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.
 - e. Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.
 - f. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.
7. Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.
 8. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act.

9. In connection with the solicitation of a sale or purchase of an OTC unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under §13 of the Securities Exchange Act when requested to do so by a customer.

10. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.

11. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account with respect to all OTC non-NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain; however, this subdivision shall apply only if the firm has been a market maker in ~~such~~ the security at any time during the month in which the monthly or quarterly statement is issued.

12. Failing to comply with any applicable provision of the Rules of Fair Practice of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a ~~self-regulatory~~ self regulatory organization approved by the SEC.

13. In connection with the solicitation of a purchase or sale of a designated security:

a. Failing to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or

b. Failing to include with the confirmation, the notice disclosure contained in subsection F of this section, except the following shall be exempt from this requirement:

(1) Transactions in which the price of the designated security is \$5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be \$5.00 or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of \$5.00 or more.

(2) Transactions that are not recommended by the broker-dealer or agent.

(3) Transactions by a broker-dealer: (i) whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the immediately preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and (ii) who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the immediately preceding 12 months.

(4) Any transaction or transactions that, upon prior written request or upon its own motion, the commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.

c. For purposes of this section, the term "designated security" means any equity security other than a security:

(1) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;

- (2) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;
- (3) Issued by an investment company registered under the Investment Company Act of 1940;
- (4) That is a put option or call option issued by The Options Clearing Corporation; or
- (5) Whose issuer has net tangible assets in excess of \$4,000,000 as demonstrated by financial statements dated within no less than 15 months ~~previously~~ that the broker or dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and
 - (a) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2.02 under the Securities Exchange Act of 1934; or
 - (b) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 241.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

F. Customer notice requirements follow:

IMPORTANT CUSTOMER NOTICE—READ CAREFULLY

You have just entered into a solicited transaction involving a security which may not trade on an active national market. The following should help you understand this transaction and be better able to follow and protect your investment.

Q. What is meant by the BID and ASK price and the spread?

A. The BID is the price at which you could sell your securities at this time. The ASK is the price at which you bought. Both are noted on your confirmation. The difference between these prices is the "spread," which is also noted on the confirmation, in both a dollar amount and a percentage relative to the ASK price.

Q. How can I follow the price of my security?

A. For the most part, you are dependent on broker-dealers that trade in your security for all price information. You may be able to find a quote in the newspaper, but you should keep in mind that the quote you see will be for dealer-to-dealer transactions (essentially wholesale prices and will not necessarily be the prices at which you could buy or sell).

Q. How does the spread relate to my investments?

A. The spread represents the profit made by your broker-dealer and is the amount by which your investment must increase (the BID must rise) for you to break even. Generally, a greater spread indicates a higher risk.

Q. How do I compute the spread?

A. If you bought 100 shares at an ASK price of \$1.00, you would pay \$100 (100 shares X \$1.00 = \$100). If the BID price at the time you purchased your stock was \$.50, you could sell the stock back to the broker-dealer for \$50 (100 shares X \$.50 = \$50). In this example, if you sold at the BID price, you would suffer a loss of 50%.

Q. Can I sell at any time?

A. Maybe. Some securities are not easy to sell because there are few buyers, or because there are no broker-dealers who buy or sell them on a regular basis.

Q. Why did I receive this notice?

A. The laws of some states require your broker-dealer or sales agent to disclose the BID and ASK price on your confirmation and include this notice in some instances. If the BID and ASK were not explained to you at the time you discussed this investment with your broker, you may have further rights and remedies under both state and federal law.

Q. Where do I go if I have a problem?

A. If you cannot work the problem out with your broker-dealer, you may contact the Virginia State Corporation Commission or the securities commissioner in the state in which you reside, the United States Securities and Exchange Commission, or the National Association of Securities Dealers, Inc.

G. Engaging in or having engaged in conduct specified in subsection A, B, C, D, or E of this section, or other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall be grounds under the Act for imposition of a penalty, denial of a pending application or refusal to renew or revocation of an effective registration.

21 VAC 5-20-330. Model rules for sales of securities at financial institutions.

A. This section applies exclusively to broker-dealer services conducted by broker-dealers and their agents on the premises of a financial institution where retail deposits are taken.

This section does not alter or abrogate a broker-dealer's obligation to comply with other applicable laws, rules, or regulations that may govern the operations of broker-dealers and their agents, including but not limited to, supervisory obligations. This section does not apply to broker-dealer services provided to nonretail customers.

B. For purposes of this section, the following terms have the meanings indicated:

"Broker-dealer services" means the investment banking or securities business as defined in paragraph (p) of Article I of the By-Laws of the NASD.

1. "Financial institution" means federal and state-chartered banks, savings and loan associations, savings banks, credit unions, and the service corporations of such institutions located in Virginia.

2. "Networking arrangement" means a contractual or other arrangement between a broker-dealer and a financial institution ~~pursuant to~~ by which the broker-dealer conducts broker-dealer services on the premises of ~~such~~ the financial institution where retail deposits are taken.

3. ~~"Broker-dealer services" means the investment banking or securities business as defined in paragraph (p) of Article I of the By-Laws of the NASD.~~

C. Standards for broker-dealer conduct. No broker-dealer shall conduct broker-dealer services on the premises of a financial institution where retail deposits are taken unless the broker-dealer and its agents comply ~~initially and continuously~~ with the following requirements:

1. Setting. Wherever practical, broker-dealer services shall be conducted in a physical location distinct from the area in which the financial institution's retail deposits are taken. In those situations where there is insufficient space to allow separate areas, the broker-dealer has a heightened responsibility to distinguish its services from those of the financial institution. In all situations, the broker-dealer shall identify its services in a manner that clearly distinguishes those

services from the financial institution's retail deposit-taking activities. The broker-dealer's name shall be clearly displayed in the area in which the broker-dealer conducts its services.

2.a. Networking arrangements and program management. ~~Networking arrangements shall be governed by a written agreement that sets forth the responsibilities of the parties and the compensation arrangements. Networking arrangements must provide that supervisory personnel of the broker-dealer and representatives of state securities authorities, unless prohibited by state law, will be permitted access to the financial institution's premises where the broker-dealer conducts broker-dealer services in order to inspect the books and records and other relevant information maintained by the broker-dealer with respect to its broker-dealer services. Management of the broker-dealer shall be responsible for ensuring that the networking arrangement clearly outlines the duties and responsibilities of all parties, including those of financial institution personnel. There shall be a written agreement between the financial institution and its associated broker-dealer that shall, at a minimum, address the areas listed below.~~

(1) A description of the responsibilities of each party, including the features of the sales program and the roles of registered and unregistered personnel;

(2) A description of the responsibilities of broker-dealer personnel authorized to make investment sales or recommendations;

(3) A description of how referrals to associated broker-dealer personnel will be made;

(4) A description of compensation arrangements for unregistered personnel;

(5) A description of training to be provided to both registered and unregistered personnel;

(6) A description of broker-dealer office audits to be conducted by the broker-dealer, including frequency, reports associated with financial institutions and records to be reviewed; and

(7) Authority of the financial institution and regulators to have access to relevant records of the broker-dealer and the financial institution in order to evaluation compliance with the agreement.

b. Program management. The program's management of the broker-dealer's networking arrangements shall address and include at a minimum, those items listed below.

(1) A description of relevant referral activities and compensation arrangements;

(2) A description of appropriate training requirements for various classes of personnel;

(3) The scope and frequency of compliance reviews and the manner and frequency of reporting to broker-dealer compliance supervisors and the financial institution compliance management group;

(4) The process of verifying that security purchases and sales are being conducted in accordance with the written networking agreement;

(5) The permissible use of financial institution and broker-dealer customer information, including how compliance with Virginia and federal law and with the broker-dealer's privacy policies will be achieved; and

(6) The existence of any potential conflicts of interest between the broker-dealer activities and the financial institution and its affiliates and appropriate disclosure of the conflicts that result from the relationship.

3. Customer disclosure and written acknowledgment.

a. At or prior to the time that a customer's securities brokerage account is opened by a broker-dealer on the premises of a financial institution where retail deposits are taken, the broker-dealer or its agents shall:

(1) Disclose, orally and in writing, that the securities products purchased or sold in a transaction with the broker-dealer:

(a) Are not insured by the Federal Deposit Insurance Corporation ("FDIC") or the National Credit Union Administration ("NCUA");

(b) Are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and

(c) Are subject to investment risks, including possible loss of principal invested.

(2) Make reasonable efforts to obtain from each customer during the account opening process a written acknowledgment of the disclosures required by subdivision C 3 a (1).

(3) Provide written disclosures that are conspicuous, easy to comprehend and presented in a clear and concise manner.

(4) Disclose, orally and in writing, that the broker-dealer and the financial institution are separate entities, and when mutual funds or other securities are bought through the broker-dealer, the client is doing business with the broker-dealer and not with the financial institution. The broker-dealer and the financial institution will likely receive compensation as a result of the purchase of securities or advisory services by the client through the broker-dealer.

b. If broker-dealer services include any written or oral representations concerning insurance coverage, other than FDIC insurance coverage, then clear and accurate written or oral

explanations of the coverage must also be provided to the customers when such representations are first made.

4. Communications with the public.

a. All of the broker-dealer's confirmations and account statements must indicate clearly that the broker-dealer services are provided by the broker-dealer.

b. Advertisements and sales literature that announce the location of a financial institution where broker-dealer services are provided by the broker-dealer or its agents, or that are distributed by the broker-dealer or its agents on the premises of a financial institution, must disclose that securities products: are not insured by the FDIC; are not deposits or other obligations of the financial institution and are not guaranteed by the financial institution; and are subject to investment risks, including possible loss of the principal invested. The shorter logo format described in subdivision C 4 d may be used to provide these disclosures.

c. Recommendations by a broker-dealer or its agents concerning nondeposit investment products with a name similar to that of a financial institution must only occur pursuant to policies and procedures reasonably designed to minimize risk of customer confusion.

d. The following shorter logo format disclosures may be used by a broker-dealer or its agents in advertisements and sales literature, including material published, or designed for use, in radio or television broadcasts, automated teller machine ("ATM") screens, billboards, signs, posters and brochures, to comply with the requirements of subdivision C 4 b provided that such disclosures are displayed in a conspicuous manner:

(1) Not FDIC insured;

(2) No bank guarantee;

(3) May lose value.

e. As long as the omission of the disclosures required by subdivision C 4 b would not cause the advertisement or sales literature to be misleading in light of the context in which the material is presented, ~~such~~ the disclosures are not required with respect to messages contained in:

(1) Radio broadcasts of 30 seconds or less;

(2) Electronic signs, including billboard-type signs that are electronic, time and temperature signs and ticker tape signs, but excluding messages contained in such media as television, on-line computer services, or ATMs; and

(3) Signs, such as banners and posters, when used only as location indicators.

5. Notification of termination. The broker-dealer must promptly notify the financial institution if any agent of the broker dealer who is employed by the financial institution is terminated for cause by the broker-dealer.

6. Unregistered financial institution employees may only receive a one-time nominal fee of a fixed dollar amount for each customer referral, and only if the payment is not contingent on whether the referral results in an investment activity or a transaction.

CHAPTER 80

INVESTMENT ADVISORS

21 VAC 5-80-65. Investment advisor records retention requirements.

The following requirements apply to every registered investment advisor as a condition of registration as an investment advisor under the Act:

1. All of the investment advisor's records, immediately upon the request of the commission, will be made available for inspection by the commission and reproduction for the commission in an office where the records are maintained;
2. All of the investment advisor's records or legible copies of the same, or print-outs of the same, pertaining to a securities transaction, any part of which occurred or is to occur within the Commonwealth of Virginia, will be made available for inspection of the commission in the office of the commission's Division of Securities and Retail Franchising within 48 hours after request of the commission for same;
3. The term "records" as used in this section means and includes all books, papers, documents, tapes, films, photographs, electronic readable format or other materials, regardless of physical form or characteristics that (i) are maintained for recordation or storage of information prepared, used or to be used in connection with a securities transaction or (ii) were used or are to be used in connection with securities transactions;
4. Failure to comply with this section may be considered grounds for the institution of a proceeding to revoke an investment advisor's registration or for such other penalty prescribed by the Act; and

5. Any investment advisor subject to a commission investigation may be required to pay the actual cost of the investigation.

21 VAC 5-80-160. Recordkeeping requirements for investment advisors.

A. Every investment advisor registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records, except an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:

1. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.
2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.
3. A memorandum of each order given by the investment advisor for the purchase or sale of any security, of any instruction received by the investment advisor from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment advisor who recommended the transaction to the client and the person who placed such the order; and shall show the account for which entered, the date of entry, and the bank,

broker or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

4. All check books, bank statements, canceled checks and cash reconciliations of the investment advisor.

5. All bills or statements (or copies of), paid or unpaid, relating to the business as an investment advisor.

6. All trial balances, financial statements prepared in accordance with generally accepted accounting principles which shall include a balance sheet, income statement and such other statements as may be required pursuant to 21 VAC 5-80-180, and internal audit working papers relating to the investment advisor's business as an investment advisor.

7. Originals of all written communications received and copies of all written communications sent by ~~such~~ the investment advisor relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given; (ii) any receipt, disbursement or delivery of funds or securities; and (iii) the placing or execution of any order to purchase or sell any security; however, (a) the investment advisor shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment advisor, and (b) if the investment advisor sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment advisor shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if ~~such~~ the notice, circular or advertisement is distributed to persons named on any list, the investment advisor shall retain with

a copy of ~~such~~ the notice, circular or advertisement a memorandum describing the list and the source thereof.

8. A list or other record of all accounts which list identifies the accounts in which the investment advisor is vested with any discretionary power with respect to the funds, securities or transactions of any client.

9. All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment advisor, or copies thereof.

10. All written agreements (or copies thereof) entered into by the investment advisor with any client, and all other written agreements otherwise related to the investment advisor's business as an investment advisor.

11. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment advisor circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment advisor), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

12. a. A record of every transaction in a security in which the investment advisor or any investment advisory representative of ~~such~~ the investment advisor has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisory

representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. ~~Such~~ The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. ~~Such~~ The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. For purposes of this subdivision 12, the following definitions will apply. The term "advisory representative" means any partner, officer or director of the investment advisor; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of the recommendations:

- (1) Any person in a control relationship to the investment adviser;
- (2) Any affiliated person of a controlling person; and
- (3) Any affiliated person of an affiliated person.

"Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with ~~such~~ the company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the ownership interest of a company shall be presumed to control ~~such~~ the company.

c. An investment advisor shall not be deemed to have violated the provisions of this subdivision 12 because of his failure to record securities transactions of any investment advisor representative if the investment advisor establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. a. Notwithstanding the provisions of subdivision 12 of this subsection, where the investment advisor is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment advisor or any investment advisory representative of such investment advisor has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisory representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. ~~Such~~ The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. ~~Such~~ The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment

advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. An investment advisor is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, the investment advisor derived, on an unconsolidated basis, more than 50% of (i) its total sales and revenues, and (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

c. For purposes of this subdivision 13, the following definitions will apply. The term "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means any partner, officer, director or employee of the investment advisor who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of such the recommendations or of the information concerning the recommendations:

- (1) Any person in a control relationship to the investment advisor;
- (2) Any affiliated person of a controlling person; and
- (3) Any affiliated person of an affiliated person.

d. An investment advisor shall not be deemed to have violated the provisions of this subdivision 13 because of his failure to record securities transactions of any investment advisor

representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

14. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of such investment advisor in accordance with the provisions of 21 VAC 5-80-190 and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. For each client that was obtained by the advisor by means of a solicitor to whom a cash fee was paid by the advisor, the following:

- a. Evidence of a written agreement to which the advisor is a party related to the payment of such fee;
- b. A signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment advisor's disclosure statement and a written disclosure statement of the solicitor; and,
- c. A copy of the solicitor's written disclosure statement. The written agreement, acknowledgement and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

For purposes of this regulation, the term "solicitor" ~~shall mean~~ means any person or entity who, for compensation, acts as an agent of an investment advisor in referring potential clients.

16. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return

of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment advisor circulates or distributes directly or indirectly, to two or more persons (other than persons connected with the investment advisor); however, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subdivision.

17. A file containing a copy of all written communications received or sent regarding any litigation involving the investment advisor or any investment advisor representative or employee, and regarding any written customer or client complaint.

18. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

19. Written procedures to supervise the activities of employees and investment advisor representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

20. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment advisor representatives, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

21. Any records documenting dates, locations and findings of the investment advisor's annual review of these policies and procedures conducted pursuant to subdivision E 2 of 21 VAC 5-80-170.

B. If an investment advisor subject to subsection A of this section has custody or possession of securities or funds of any client, the records required to be made and kept under subsection A of this section shall also include:

1. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to ~~such~~ the accounts.

2. A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each ~~such~~ purchase and sale, and all debits and credits.

3. Copies of confirmations of all transactions effected by or for the account of any such client.

4. A record for each security in which any ~~such~~ client has a position, which record shall show the name of each ~~such~~ client having any interest in each security, the amount or interest of each ~~such~~ client, and the location of each ~~such~~ security.

C. Every investment advisor subject to subsection A of this section who renders any investment advisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment advisor, make and keep true, accurate and current:

1. Records showing separately for each ~~such~~ client the securities purchased and sold, and the date, amount and price of each ~~such~~ purchase and sale.

2. For each security in which any ~~such~~ client has a current position, information from which the investment advisor can promptly furnish the name of each ~~such~~ client and the current amount or interest of ~~such~~ the client.

D. Any books or records required by this section may be maintained by the investment advisor in such manner that the identity of any client to whom ~~such~~ the investment advisor renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

E. Every investment advisor subject to subsection A of this section shall preserve the following records in the manner prescribed:

1. All books and records required to be made under the provisions of subsection A ~~to~~ through subdivision C 1, inclusive, of this section, except for books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section, shall be maintained ~~and preserved~~ in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years of which shall be maintained in the principal office of the investment advisor.

2. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment advisor and of any predecessor, shall be maintained in the principal office of the investment advisor and preserved until at least three years after termination of the enterprise.

3. Books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section shall be maintained ~~and preserved~~ in an easily accessible place for a period of not less than five years, the first two years of which shall be maintained in the principal office of the

investment advisor, from the end of the fiscal year during which the investment advisor last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

4. Books and records required to be made under the provisions of subdivisions A 17 through A 20, inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment advisor, or for the time period during which the investment advisor was registered or required to be registered in the state, if less.

5. Notwithstanding other record preservation requirements of this subsection, the following records or copies shall be required to be maintained at the business location of the investment advisor from which the customer or client is being provided or has been provided with investment advisory services: (i) records required to be preserved under subdivisions A 3, A 7 through A 10, A 14 and A 15, A 17 through A 19, subsections B and C ~~inclusive of this subdivision~~, and (ii) the records or copies required under the provision of subdivisions A 11 and A 16 of this section which records or related records identify the name of the investment advisor representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in this subsection.

F. An investment advisor subject to subsection A of this section, before ceasing to conduct or discontinuing business as an investment advisor, shall arrange for and be responsible for the

preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the commission in writing of the exact address where ~~such~~ the books and records will be maintained during such period.

G. 1. The records required to be maintained ~~and preserved~~ pursuant to this section may be immediately produced or reproduced by photograph on film or, as provided in subdivision 2 of this subsection, on magnetic disk, tape or other computer storage medium, and be maintained ~~and preserved~~ for the required time in that form. If records are preserved or reproduced by photographic film or computer storage medium, the investment advisor shall:

- a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;
- b. Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium which the commission by its examiners or other representatives may request;
- c. Store separately from the original one other copy of the film or computer storage medium for the time required;
- d. With respect to records stored on computer storage medium, maintain procedures for maintenance ~~and preservation~~ of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and
- e. With respect to records stored on photographic film, at all times have available, for the commission's examination of its records, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

2. Pursuant to subdivision 1 of this subsection, an advisor may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the advisor's business, are created by the advisor on electronic media or are received by the advisor solely on electronic media or by electronic transmission.

H. Any book or record made, kept, maintained, and preserved in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3) and 17a-4 (17 CFR 240.17a-4) under the Securities Exchange Act of 1934, which is substantially the same as the book, or other record required to be made, kept, maintained, and preserved under this section shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

I. For purposes of this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment advisor, the client has directed or approved the purchase or sale of a definite amount of the particular security.

J. Every investment advisor registered or required to be registered in this state Commonwealth and that has its principal place of business in a state other than ~~this state~~ the Commonwealth shall be exempt from the requirements of this section to the extent provided by the National Securities Markets Improvement Act of 1996 (Pub.L. No. 104-290), provided the investment advisor is licensed in such state and is in compliance with such state's recordkeeping requirements.

~~K. Every registered investment advisor as a condition of its registration as an investment advisor under the Act hereby agrees and represents that:~~

- ~~1. All of the investment advisor's records, immediately upon the request of the commission, will be made available for inspection by the commission and reproduction for the commission in the office where such records are maintained;~~
- ~~2. All of the investment advisor's records (or legible copies of the same, or print-outs of same, if automated) pertaining to the investment advisory business any part of which occurred or is to occur within the Commonwealth of Virginia will be made available for inspection of the commission in the office of the commission's Division of Securities and Retail Franchising within 48 hours after request of the commission for same;~~
- ~~3. The term "records" shall mean and include all books, papers, documents, tapes, films, photographs, electronic readable format or other materials, regardless of physical form or characteristics, (i) that are maintained for the recordation or storage of information prepared, used or to be used in connection with the investment advisory business or (ii) that were used or are to be used in connection with the investment advisory business;~~
- ~~4. Failure to comply with this subsection may be considered grounds for the institution of a proceeding to revoke an investment advisor's registration or other penalty prescribed by the Act;~~
- ~~5. Any investment advisor subject to an investigation made by the commission may be required to pay the actual cost of the investigation.~~

21 VAC 5-80-200. Dishonest or unethical practices.

A. An investment advisor or federal covered advisor is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor or federal covered advisor and his

clients and the circumstances of each case, an investment advisor or federal covered advisor shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation, risk tolerance and needs, and any other information known or acquired by the investment advisor or federal covered advisor after reasonable examination of the client's financial records.
2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor or federal covered advisor, or a financial institution engaged in the business of loaning funds or securities.

7. Loaning money to a client unless the investment advisor or federal covered advisor is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment advisor or federal covered advisor.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor or federal covered advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for ~~such service~~ the services, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor without disclosing that fact. This prohibition does not apply to a situation where the advisor uses published research reports or statistical analyses to render advice or where an advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisors or federal covered advisors providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor or federal covered advisor or any of his employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the advisor or his employees.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. ~~Publishing, circulating or distributing any advertisement that would not be permitted under Rule 206(4)-1 under the Investment Advisers Act of 1940 (17 CFR 275.206(4)-1).~~ Directly or indirectly using any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment or investment advisor representative;

b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; or

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated to its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

f. Contains any untrue statement of a material fact, or that is otherwise false or misleading;

g. For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(1) Any analysis, report, or publication concerning securities;

(2) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;

(3) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(4) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor has custody or possession of such securities or funds, when the investment advisor's action is subject to and does not comply with the safekeeping requirements of 21 VAC 5-80-140.

16. Entering into, extending or renewing any investment advisory contract unless ~~such~~ the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor or federal covered advisor and that no assignment of such contract shall be made by the investment advisor or federal covered advisor without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

B. An investment advisor representative is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor representative and his clients and the circumstances of each case, an investment advisor representative shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor representative after reasonable examination of the client's financial records.
2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor representative, or a financial institution engaged in the business of loaning funds or securities.
7. Loaning money to a client unless the investment advisor representative is engaged in the business of loaning funds or the client is an affiliate of the investment advisor representative.
8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for ~~such service~~ the services, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.
9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor who the investment advisor representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment advisor or federal covered advisor uses published research reports or statistical analyses to render advice or where an investment advisor or federal covered advisor orders such a report in the normal course of providing service.
10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisor representatives providing essentially the same services.
11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor representative which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment advisor representative.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Publishing, circulating or distributing any advertisement that would not be permitted under Rule 206(4)-1 under the Investment Advisers Act of 1940.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor representative other than a person associated with a federal covered advisor has custody or possession of such securities or funds, when the investment advisor representative's action is subject to and does not comply with the safekeeping requirements of 21 VAC 5-80-140.

16. Entering into, extending or renewing any investment advisory or federal covered advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor representative and that

no assignment of such contract shall be made by the investment advisor representative without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

C. The conduct set forth in subsections A and B of this section is not all inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice except to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

D. The provisions of this section shall apply to federal covered advisors to the extent that fraud or deceit is involved, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

**INVESTMENT ADVISOR REPRESENTATIVE MULTIPLE EMPLOYMENT
AGREEMENT**

(Print/Type Representative's name and CRD Number)

Pursuant to the requirements of 21 VAC 5-80-250 of the Virginia Administrative Code, a representative may be employed by more than one registered investment advisor. In order to comply with the provisions of the regulation, each investment advisor identified below consents to the multiple employment of the representative and agrees to be responsible for the employment activity of the representative on behalf of each undersigned investment advisor.

Investment Advisor Name/CRD# (Type/Print)

By: _____
Signature

Name of Signer (Type/Print)

Title of Signer (Type/Print)

Date

Investment Advisor Name/CRD# (Type/Print)

By: _____
Signature

Name of Signer (Type/Print)

Title of Signer (Type/Print)

Date

AGENT MULTIPLE EMPLOYMENT
AGREEMENT

(Print/Type Agent's name and CRD Number)

Pursuant to the requirements of 21 VAC 5-20-95 of the Virginia Administrative Code, an agent may be employed by more than one registered broker-dealer. In order to comply with the provisions of the regulation, each broker-dealer identified below consents to the multiple employment of the agent and agrees to be responsible for the employment activity of the agent on behalf of each undersigned broker-dealer.

Broker-Dealer Name/CRD# (Type/Print)

By: _____
Signature

Name of Signer (Type/Print)

Title of Signer (Type/Print)

Date

Broker-Dealer's Name/CRD# (Type/Print)

By: _____
Signature

Name of Signer (Type/Print)

Title of Signer (Type/Print)

Date